

Message Text

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PAGE 01 HAVANA 02298 081549Z
ACTION SNM-05

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SUBJ: NARCOTICS LAWS - CUBA

REF: A. STATE 170187, B. HAVANA 2146

1. CUBAN MINISTRY OF FOREIGN RELATIONS (MINREX) HAS STILL NOT GRANTED US APPOINTMENT WITH APPROPRIATE MINISTRY OF INTERIOR OFFICIALS FOR DISCUSSION OF NARCOTICS LAWS. USINT OFFICER, HOWEVER, USED OCCASION OF CALL ON MINREX DIRECTOR OF JURIDICAL OAFFAIRS OLGA MIRANDA, AUGUST 7, TO CLARIFY SOME OF POINTS REPORTED IN REFTEL B. DR. MIRANDA'S CLARIFICATIONS FOLLOW:

2. QUALIFYING AMOUNT OF DRUGS. POSSESSION OR TRAFFICKING OFFENSE OCCURS NO MATTER WHAT QUANTITY OF DRUGS IS INVOLVED--HOWEVER MINIMAL.

3. TYPE OF DRUGS. POSSESSION OR TRAFFICKING OFFENSE OCCURS, AND IS PUNISHED IN SAME MANNER, NO MATTER WHAT TYPE OF DRUGS IS INVOLVED--MARIJUANA OR STRONGER DRUGS.

4. COURT PUNISHMENT. COURT HAS COMPLETE DISCRETION, WITHIN LIMITS ESTABLISHED IN PENAL CODES, TO IMPOSE SENTENCE PENDENDING ON SEVERITY OF OFFENSE.

UNCLASSIFIED

UNCLASSIFIED

PAGE 02 HAVANA 02298 081549Z

5. PROOF OF TRAFFICKING. TRAFFICKING, RATHER THAN SIMPLE POSSESSION, IS CHARGED WHEN PERSON IS SEEN DELIVERING DRUGS OR WHEN AMOUNT OF DRUGS INVOLVED IS MORE THAN SELF-CONSUMPTION REQUIREMENTS OR WHEN INDIVIDUAL IS PRIOR TRAFFICKER. PROCURING OF DRUGS, WHICH IS ALSO CONSIDERED TRAFFICKING, IS CHARGED WHEN PERSON DIRECTLY OR THROUGH

INTERMEDIARY MAKES EFFORT TO OBTAIN, OR ASKS FOR, DRUGS.
CONSPIRACY TO TRAFFIC DRUGS IS ALSO PUNISHED.

6. CRIMINAL PROCEDURE. CRIMINAL PROCEDURE IS AS FOLLOWS:
A. INVESTIGATIVE ORGANS GIVE REPORT (INSTRUCCION DE SUMARIO)
TO PROSECUTOR (FISCAL); (B) PROSECUTOR DETERMINES
CHARGES TO BE FILED (CALIFICA CONCLUSIONES), (C) FOREIGN
DEFENDANT THROUGH EMBASSY THEN HAS RIGHT TO HIRE DEFENSE
LAWYER OR COURT WILL APPOINT ONE, (D) ONE OR TWO DAY TRIAL
IS HELD AND COURT DICTATES VERDICT (FALLO) AND SENTENCE.
THERE IS NO REVIEW PROCEDURE BUT DEFENDANT HAS RIGHT TO
APPEAL (RECLAMAR) TO HIGHER COURT.

7. SANCTIONS. REGARDING PAROLE, PRISONER HAS RIGHT
TO SOLICIT "CONDITIONAL LIBERTY" AFTER COMPLETION OF ONE-THIRD
OF HIS SENTENCE. ADMINISTRATION OF PRISONS, MINISTRY OF
INTERIOR RULES ON THESE REQUESTS.

8. EXPULSION. UNDER LAW, IF INVESTIGATIVE ORGANS
DECIDE TO CARRY CASE FORWARD, ONLY COURT, AFTER TRIAL,
CAN ORDER EXPULSION OF DEFENDANT FROM CUBA. HOWEVER,
POSSIBILITY DOES EXIST FOR INVESTIGATIVE ORGANS TO HAND
OVER ARRESTED INDIVIDUAL TO IMMIGRATION AUTHORITIES FOR
EXPULSION WITHOUT CARRYING THROUGH INVESTIGATION AND FILING
REPORT (INSTRUCCION DE SUMARIO).

UNCLASSIFIED

UNCLASSIFIED

PAGE 03 HAVANA 02298 081549Z

9. ADDITIONAL COMMENTS. DR. MIRANDA SAID THAT HARDLY A
MONTH PASSES BY WITHOUT A FOREIGNER (USUALLY COMOMBIANS)
BEING CHARGED WITH DRUG TRAFFICKING. MOST ARRIVE AS RESULT
OF SHIPWRECKS OR PLANE CRASHES OR IN PROCESS OF DODGING INTO
CUBAN TERRITORIAL WATERS TO ELUDE US COAST GUARD. ALL SUCH
TRAFFICKERS ARE IMPRISONED IN CUBA, DR. MIRANDA SAID. SHE
ADDED THAT NEW PENAL CODE WHICH WILL BE ADOPTED IN DECEMBER
WILL PROBABLY INCREASE ALREADY SEVERE NARCOTICS PENALTIES.
(COMMENT: PUNISHMENTS WERE ALREADY INCREASED SEVERELY THIS
YEAR BY DECREE-LAW 13--SEE REFTEL B. THE DRAFT NEW PENAL
CODE, WHICH HERETOFORE ONLY CONTAINED VERBATIM PROVISIONS
OF DECREE-LAW 13 WILL, THEREFORE, PRESUMABLY BE TOUGHENED
UP EVEN FURTHER.)
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